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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

September 3, 1975

LTG Brent Scowcroft
Deputy Assistant to the President for
National Security Affairs
The White House
Washington, D. C. 20500

Dear Brent:

I have three major suggestions regarding the draft Executive Orders you sent for our review on August 30. In addition, there are a number of editorial changes as well as substantive changes outlined in the attached memorandum.

Our primary concern deals with the relationship of the President's Foreign Intelligence Advisory Board and the National Security Council Intelligence Committee as the President's oversight vehicles with respect to the Intelligence Community. I believe that the NSCIC should be the primary vehicle of supervision. The 1947 statute requires the CIA to report to the NSC. This would put the Agency under the proper chain of command. The NSCIC is also an appropriate chain of command for the intelligence activities of the other departments. Such supervision can be accomplished by a staff with the authorization to investigate all aspects of the activities of the intelligence producing agencies. The staff would not only be technically competent but also able to handle allegations of improprieties.

PFIAB, as it is proposed in the draft Executive Order, would act as a civilian review board, much like the organizations created in the late 1960's to oversee metropolitan police forces. As a civilian review board, it is susceptible to many of the vices attached to such organizations. Now, PFIAB plays an important role in the major questions relating to foreign intelligence. It is questionable whether the same talented people would be interested or sufficiently free to handle the continuous



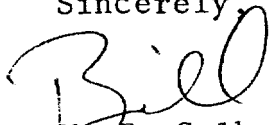
"watch dog" assignment. Thus I recommend that PFIAB continue its present role as independent adviser to the President on major intelligence problems but not be brought into detailed management review for which its part-time membership is not well suited.

A second major suggestion is that we not talk about the "foreign intelligence community." The community concept has always been somewhat complicated and difficult. I believe it more appropriate to refer to those agencies of the U. S. Government participating in foreign intelligence and counter-intelligence activities. The DCI could continue to have the two hats of full responsibility for CIA and a staff responsibility to the President for review and recommendations with respect to the other agencies of the Government involved in foreign intelligence, but their departmental command structure would remain inviolate. (Arrangements would be appropriate, of course, in special cases of joint activity for an ExCom approach.) The DCI's staff responsibility should, in my view, cover all aspects of national foreign intelligence plus making recommendations for optimum mutual support between national and tactical foreign intelligence. This would eliminate the requirement currently on the DCI to report on all foreign intelligence "including tactical intelligence," which we have found to be a very difficult concept to implement. This would also leave the DCI with his two hats rather than adopting what I believe would be a counterproductive suggestion of separating the DCI as a foreign intelligence counsellor working in the White House from his current bureaucratic and substantive base in the CIA.

The third major suggestion is to insure full coordination of the enclosed with the FBI as well as DOD and State. A number of the activities here would bear heavily on the FBI's situation, and I think they should be given every opportunity to examine them.

As noted above, I have made a number of specific textual suggestions in the attached, supplementary to the three points above.

Sincerely,


W. E. Colby
Director

Attachment

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August 30, 1975

TO: The Director of Central Intelligence, CIA

FROM: Brent Scowcroft

Attached are two draft Executive Orders being considered for issuance in response to recommendations of the Rockefeller Commission. They concern the establishment of a broader oversight role for PFIAB; a more precise role for NSCIC; and limitations on allowable foreign intelligence activities. Could I ask that you review these and provide comments and/or concurrence by Noon Tuesday, September 2, 1975.

(8/29/75)

EXECUTIVE ORDER _____

REORGANIZING PRESIDENTIAL OVERSIGHT OF
THE FOREIGN INTELLIGENCE COMMUNITY

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

II.
SECTION 1. PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

(a) The President's Foreign Intelligence Advisory Board, hereinafter referred to as "the Board," shall:

(1) review and advise the President concerning all activities of the United States Government which relate to foreign intelligence and counterintelligence. The Board's review shall include quality of foreign intelligence collection and estimates, organization and management of the Foreign Intelligence Community, and compliance of the Foreign Intelligence Community with applicable provisions of the Constitution and laws of the United States, executive orders, and directives of the National Security Council.]

Situations requiring additional effort or improvement.

(2) receive, consider, and make recommendations ^{to the President} with respect to matters identified to the Board by the Director of Central Intelligence, or by officials of the Central Intelligence Agency, the Department of Defense, the Federal Bureau of Investigation, and other Government departments, agencies, and organizations of the Foreign Intelligence Community; or by any other source;

(3) report to the President and, where appropriate, to the Director of Central Intelligence and to the Attorney General, concerning the Board's findings and appraisals, and make appropriate recommendations;

(4) submit interim and annual reports to the President on its findings and recommendations.

(b) The Board may receive, investigate, consider, and make appropriate recommendations with respect to ^{any activities of} ~~allegations of improprieties~~ involving agencies ^{having foreign intelligence responsibilities} ~~within the Foreign Intelligence Community made by~~ employees of such agencies. ~~In this connection,~~ The Director of Central Intelligence, the Director of FBI, and the heads of other departments, agencies and organizations ^{having foreign intelligence responsibilities} ~~comprising the Foreign Intelligence Community,~~ and the ~~Inspectors General thereof,~~ may seek the advice of the Board ^{on any foreign intelligence matter} ~~with respect to activities or categories of activities which in the light of~~ the statutory authority of any such agency, or any restrictions imposed by Executive Order, may have been or, if implemented, might be improper or appear to be improper.] As appropriate, the Chairman of the Board may designate a special panel of the Board to receive and make recommendations to the Board on such ~~allegations,~~ matters.

(c) As used in this order, the term "Foreign Intelligence Community" means those organizations (or subdivisions thereof) which

collect, disseminate or evaluate foreign intelligence or counter-
intelligence.

(d) (1) In order to facilitate performance of the Board's functions, the Director of Central Intelligence, the Director of the FBI, the heads of all other departments, agencies, and organizations comprising the Foreign Intelligence Community, and the Inspectors General thereof, shall regularly:

(i) make available to the Board all information with respect to foreign intelligence, counterintelligence, and related matters which the Board may require for the purpose of carrying out its responsibilities to the President in accordance with the terms of this Order;

(ii) notify the Board of major issues ^{foreign intelligence} ~~in the Foreign Intelligence Community;~~

(iii) identify to the Board specific operational issues or matters in which there is a potential for official or public concern;

(2) Each Inspector General (or other official with equivalent duties) of the Foreign Intelligence Community shall have the authority to report directly to the Board, after notifying the head of his organization.

(3) The head of each organization in the Foreign Intelligence Community shall designate in writing to the Board the name of an individual and office to serve as the primary point of contact in support of Board functions. In addition, the Board is authorized to call upon persons at all levels within the Foreign Intelligence Community.

(e) Members of the Board shall be appointed by the President from among persons outside the Government, qualified on the basis of ability, knowledge, diversity of background and experience, and with a view to achieving continuity. The members shall receive compensation and allowances consonant with law.

(f) The President shall designate from among the Board a Chairman who shall devote substantial time to his duties with the Board.

(g) The Board shall employ a staff headed by an Executive Secretary, who shall be appointed by the President. Neither he nor any other staff member shall be employed by or under contract with an agency or department within the Foreign Intelligence Community during their tenure with the Board. The Executive Secretary shall be authorized, subject to the approval of the Board and in a manner consonant with law, to hire and fix the compensation of such additional personnel as may be necessary for performance of the Board's duties.

(h) Compensation and allowances of the Board, the Executive Secretary, and other members of the staff, together with other expenses arising in connection with the work of the Board, shall be paid from the Executive Office Appropriation Act or from corresponding appropriations made in future years. Such payments shall be made without regard to the provisions of Section 3681 of the Revised Statutes and Section 9 of the Act of March 4, 1909, 35 Stat. 1027 (31 U.S.C. 672 and 673).

(i) Executive Order No. 11460 of March 20, 1969, is hereby revoked.

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SECTION 2. NATIONAL SECURITY COUNCIL INTELLIGENCE COMMITTEE

(a) The National Security Council Intelligence Committee, hereinafter referred to as "the Committee", shall be composed of: The Assistant to the President for National Security Affairs, Chairman; The Under Secretary of State; The Under Secretary of the Treasury; The Deputy Secretary of Defense; the Deputy Attorney General; The Chairman of the Joint Chiefs of Staff; and the Director of Central Intelligence. The Committee shall have a staff headed by an Executive Secretary who shall be appointed by the Chairman.

(b) The Committee shall:

(1) conduct a continuing review and assessment of the objectives, conduct, propriety, management, and organization of all activities of the United States Government which relate to foreign intelligence or counterintelligence.

(2) ensure compliance by all agencies of the Foreign Intelligence Community with the Constitution and laws of the United States, applicable executive orders, and directives of the National Security Council.

(3) give direction and guidance to the Foreign Intelligence Community on national substantive intelligence needs and provide for a continuing evaluation of intelligence products from the viewpoint of the intelligence consumer.

(4) receive from the Foreign Intelligence Community, as the Committee may require, all information provided to the President's Foreign Intelligence Advisory Board ~~[with the exception of information so provided under Subsection (b) of Section 1 of this Order.]~~

(5) make recommendations to the National Security Council for appropriate actions on matters within its purview.

(c) (1) In order to facilitate performance of the Committee's functions, the Director of Central Intelligence, the Director of the FBI,

the heads of all other departments, agencies, and organizations comprising the Foreign Intelligence Community, and the Inspectors General thereof, shall regularly:

(i) make available to the Committee all information with respect to foreign intelligence, counterintelligence, and related matters which the Committee may require for the purpose of carrying out its responsibilities in accordance with the terms of this Order;

(ii) notify the Committee of major issues in the Foreign Intelligence Community;

(iii) identify to the Committee specific operational issues or matters in which there is a potential for official or public concern;

(iv) provide to the Committee all information, as the Committee may require, that is made available to the President's Foreign Intelligence Advisory Board;

(2) The Director of Central Intelligence, the Director of the FBI, and the heads of other departments, agencies, and organizations comprising the Foreign Intelligence Community and the Inspectors General thereof, may seek the advice of the Committee with respect to activities or categories of activities which in the light of the statutory authority of any such agency, or any restrictions imposed by Executive

Order, may have been or, if implemented, might be improper or appear to be improper.

(3) The head of each organization in the Foreign Intelligence Community shall designate in writing to the Committee the name of an individual and office to serve as the primary point of contact in support of Committee functions. In addition, the Committee is authorized to call upon persons at all levels within the Foreign Intelligence Community.

INTELLIGENCE ACTIVITIES

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION I. Definitions. As used in this Order the following terms shall have the meanings ascribed to them below:

(a) "Collection" means the gathering and storage, or the gathering and dissemination, of information.

(b) "United States" includes the United States, its territories and possessions.

(c) "Domestic activities" mean any conduct or activity of any kind or description carried on within the United States.

(d) "Foreign intelligence" means the collection, evaluation, or dissemination of information on the capabilities, intentions and activities of foreign nations, organizations or persons.

(e) "Foreign counterintelligence" means the activities conducted to protect the United States against foreign espionage, sabotage, subversion or terrorism.

(f) "Incidental reception" means the receipt of information about the [domestic] activities of United States citizens as a result of efforts whose sole purpose is to collect foreign intelligence or foreign counterintelligence or conduct other activities related to foreign intelligence or foreign counterintelligence.

(g) "Foreign intelligence agency" means any department or agency, or division thereof, ^{has a function} ~~which is primarily~~ engaged in foreign intelligence or foreign counterintelligence.

SECTION II. The following activities shall not be conducted by any foreign intelligence agency or by any department or agency in the pursuit of foreign intelligence or foreign counterintelligence:

(a) Collection, evaluation, correlation or analysis, of information concerning the domestic activities of United States citizens; provided, however, that nothing herein shall preclude:

resident
aliens
?

(1) the collection, evaluation, correlation and analysis of information derived from ^{public} ~~published~~ sources; or

(2) the collection, evaluation, correlation and analysis of information on:

(i) current employees (including military ^{Contractors,} personnel) or contractor's employees, or applicants for either type of employment, or other persons who require access to classified information, with the consent of the applicant,

by the employing or disclosing agency or ^{or former employees, contractors' employees, or others who received clearance for} department, ^{classified information and signed secrecy agreements having effect after relationships with the foreign intelligence agency has terminated}

(ii) persons who pose a clear and direct physical threat to foreign intelligence agency personnel or facilities, provided that all such informa-

tion is collected only by the agency threatened and is also promptly transmitted to appropriate law enforcement agencies responsible for protecting the facilities or personnel; or

(iii) persons reasonably suspected of espionage or other illegal activities relating to foreign intelligence or foreign counterintelligence, provided that all such information is also promptly transmitted to the Federal Bureau of Investigation; or

(iv) persons who ^{are under consideration for a} ~~have~~ knowingly and voluntarily ~~entered a~~ ^{the} relationship with ~~an~~ agency, provided that such information is limited to that information supplied voluntarily by such persons, and is collected and used only by the agency with whom a relationship was entered.]

Provided further, that, information collected and maintained pursuant to these provisions of this section shall be used only for determining fitness of any person for employment or access to classified information, performing routine functions incident to the agency's responsibilities, or preventing or terminating the infliction of physical damage to foreign intelligence agency facilities or personnel or criminal activities damaging to foreign intelligence or foreign counterintelligence; and that the record of any investigation

investigation was authorized, the reason for such investigation and the result thereof.

(3) the transmission of any information concerning criminal activities that is received through incidental reception ^{other than (b) below} to any law enforcement agency with appropriate jurisdiction, provided that no such information will be retained by the transmitting agency if prohibited by this order.

(b) Surveillance by electronic or technical means within the United States without the consent of the subject thereof ^{and under terms set forth by} without prior written authorization of the Attorney General. For the purposes of this order, the monitoring of a conversation with the consent of one of the parties shall not be deemed surveillance.

(c) Testing of electronic surveillance and monitoring equipment within the United States without consent of the persons monitored unless:

(i) it is technically impractical to test such surveillance and monitoring equipment in a manner that would include consent;

(ii) the authorization of the Attorney General is obtained;

(iii) the data collected is disclosed only to test engineers and is destroyed immediately upon termination of the test;

(d) Any opening of mail in violation of U.S. postal laws and regulations,

[(i) within the United States; or

(ii) elsewhere if the mail is addressed to or sent by United States citizens.]

(e) The examination of envelopes in the United States

unless:

(i) such examination is performed in strict compliance with United States postal laws and regulations;

(ii) such examination is certified in writing by the Director of Central Intelligence as necessary for foreign intelligence or foreign counterintelligence purposes; and

(iii) the identity of the official recommending such action to the DCI and the reasons supporting such recommendation shall appear clearly in the records of the recommending agency, the Director of Central Intelligence, and the United States Postal Service.

(f) Preparation of psychological, medical or any other types of evaluative profiles on United States citizens other than applicants for employment, current ^{or former} employees, or United States citizens under the physical control of foreign elements, or, to the extent necessary to determine their credibility, volunteer sources of intelligence information, on a ^{providing} voluntary basis.

(g) Participation in law enforcement activities or funding of any law enforcement agency within the United States except as may be explicitly authorized by law. Provided, that this prohibition shall not preclude.

(i) cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence or foreign counter-intelligence;

(ii) provision of specialized equipment or technical knowledge developed in the course of foreign intelligence activities, for use by any other Federal department or agency.

(h) Overseas intelligence-related operations other than those intended solely for obtaining necessary foreign intelligence and foreign counterintelligence, unless ^{activities} ~~[each]~~ such ~~[operation]~~ shall have been ^{determined} ~~[specifically approved]~~ by the President ~~[and determined, as required by~~ ^{substitute statutory language} ~~law]~~ to be important to the national security of the United States.

(i) Collection of intelligence within the United States from United States citizens who are not knowingly and voluntarily providing the intelligence to the agency involved. When collection of foreign intelligence within the United States from persons who are not United States

citizens results in the incidental reception of information from unknowing citizens, however, the receiving agency shall be permitted to make appropriate use of disposition of such information

SECTION III. The activities of the Central Intelligence Agency shall relate only to foreign intelligence or foreign counterintelligence.

CLARIFYING THE RESPONSIBILITY OF THE
DIRECTOR OF CENTRAL INTELLIGENCE TO
PROTECT SOURCES AND METHODS OF FOREIGN
INTELLIGENCE

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION I. In discharging his responsibility for the protection of sources and methods of foreign intelligence from unauthorized disclosure under 50 U. S. C. § 403(d)(3), the Director of Central Intelligence:

(a) shall ensure, through leadership, direction (including promulgation of regulations^{applicable to the Community as a whole}), and guidance, that appropriate policies and procedures are developed to properly protect sensitive intelligence sources and methods; and

(b) in the event of a disclosure or threatened disclosure within the United States of sources or methods of foreign intelligence shall only:

(1) as appropriate, use lawful means to prevent, or discover the circumstances surrounding, such disclosure by present or former employees of the Central Intelligence Agency or persons,

or employees of persons or organizations presently or formerly under contract with the Central Intelligence Agency, but only with respect to information obtained by such persons or employees as a result of such employment;

(2) provide direction, guidance or technical assistance to other executive branch departments and agencies from which a disclosure may have occurred or be threatened; and

(3) in cases involving continuing security violations, recommend to the Attorney General that the case be referred to the Federal Bureau of Investigation for investigation.

SECTION 2. The head of each organization of the foreign intelligence community shall:

(a) protect foreign intelligence sources and methods within such department or agency;

(b) establish appropriate internal policies and procedures consistent with the guidance and direction of the Director of Central Intelligence to prevent unauthorized disclosure of intelligence sources and methods from such organization; and

(c) as appropriate, and through lawful means, prevent, or discover the circumstances surrounding, such disclosure or threatened disclosure from within such organization.